

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

UTSCH'S MARINA, INC.,

Plaintiff,

v.

MOTOR VESSEL, "POPS WAY", A
1976 26' PENN YAN, BEARING HULL
ID NUMBER PYB26144M75G &
REGISTRATION NUMBER NJ4159AK,
HER ENGINE, TACKLE, APPAREL &
HER APPURTENANCES IN REM, et
al.,

Defendants.

Civil No. 11-4056 (RMB/JS)

ORDER

THIS MATTER having come before the Court on the Motion of Plaintiff, UTSCH'S MARINA, INC., for a Default Judgment against the defaulting Defendants in this matter; and

THE COURT NOTING that Plaintiff seeks in custodia legis expenditures, the unsatisfied balance of maritime liens after deducting the value of the winning Marshals' sale price or credit bid, service of process costs split proportionately among each vessel owner, and prejudgment interest; and

THE COURT FURTHER NOTING that Plaintiff also seeks an award of attorney's fees and legal costs of a sum totaling \$65,410.57; and

THE COURT FINDING that Plaintiff has adequately demonstrated justification for an award of the in custodia legis expenditures, the unsatisfied balance of maritime liens after deducting the value of the winning Marshals' sale price or credit bid, service of process costs split proportionately among each vessel owner, and prejudgment interest. See Utsch's Marina, Inc. v. Motor Vessel, No. 09-5848, 2011 U.S. Dist. LEXIS 4934 (D.N.J. Jan. 18, 2011); and

THE COURT FURTHER FINDING that the amount to be awarded against the individual Defendants is unclear as the calculations vary on pages 2 versus 13-14 of Plaintiff's memorandum in support of default judgment and different amounts are presented in Plaintiff's proposed Order as to some Defendants; and

THE COURT FURTHER NOTING that "[a]s a general matter, attorneys' fees are not available in admiralty cases unless the court determines in its equitable discretion that one party has acted in bad faith," Sosebee v. Rath, 893 F.2d 54, 56 (3d Cir. 1990); see Madeja v. Olympic Packers, L.L.C., 310 F.3d 628, 635 (9th Cir. 2002) ("The equitable grant of attorney's fees is appropriate in admiralty only when the ship owner acted arbitrarily, recalcitrantly, or unreasonably."); Templeman v. Chris Craft Corp., 770 F.2d

245, 250 (1st Cir. 1985) ("Under admiralty law, a court has inherent power to assess attorneys' fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." (citation and internal quotation marks omitted)); and

THE COURT FINDING that although Defendants did not make proper payments or appear in this case, no evidence demonstrates the bad faith or vexatiousness necessary to warrant an award of attorney's fees and costs, expenses that are generally assumed by each respective party; and

THE COURT FURTHER FINDING that Plaintiff does not point to any other legal authority that would justify an award of attorney's fees and costs in this case, and Plaintiff's request for attorney's fees and legal costs should be denied. See Utsch's Marina, Inc. v. Motor Vessel, No. 09-5848, 2011 U.S. Dist. LEXIS 4934 (D.N.J. Jan. 18, 2011)(denying an award of attorneys fees under similar circumstances);

ACCORDINGLY, IT IS HEREBY on this 20th day of December 2013,

ORDERED that Judgment be entered in favor of the Plaintiff **UTSCH'S MARINA, INC.** and against the defaulting Defendants in an amount to be determined; and it is further

ORDERED that Plaintiff file supplemental papers on the

docket within thirty (30) days of this Order providing correct and consistent calculations representing an award of the in custodia legis expenditures, the unsatisfied balance of maritime liens after deducting the value of the winning Marshals' sale price or credit bid, service of process costs split proportionately among each vessel owner, and prejudgment interest; and it is further

ORDERED that Plaintiff's request for an award of attorney's fees and costs is DENIED.

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge